

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

**ORDER AMENDING RULE 16
AND DELETING RULE 16.1
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE**

This 21st day of February, 2008, it is ORDERED THAT:

1) Court of Common Pleas Civil Rule 16 is amended as follows:

(a) Redesignate the existing paragraph to CCP Civ. R. 16 as paragraph (a) and creating a new paragraph (b) as follows;

(b) Scheduling and Planning - Except in categories of actions identified in this rule or any specific action exempted by the Court,

(1) The Court may under the provisions of this Rule enter a Pre-Trial Scheduling Order, that either establishes or limits the following time schedules;

i) To join other parties or to amend the pleadings.

ii) To file and hear motions.

iii) To complete discovery.

iv) To engage in compulsory alternative dispute resolution (“ADR”), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, nonbinding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court.

v) In the event the parties cannot agree on an ADR Practitioner, they may file a joint motion with the Court within 30 days of issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(2) In the event the Court elects to not enter a Scheduling or Planning Order, the parties, of any case not exempted under this rule, shall select an ADR practitioner within thirty (30) calendar days of the last responsive pleadings and comply with the balance of the provisions of this Rule.

(i) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint Motion with the Court within thirty (60) days of the last responsive pleading requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(3) The parties shall select an eligible ADR Practitioner who may serve under this Rule. Each ADR Practitioner shall have been a practicing member of the Delaware Bar for at least five (5) years and be in good standing.

(4) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties including, but not limited to, dismissal of the action or default judgment.

(5) The compulsory ADR provisions set forth in this Civil Rule shall not apply to cases unless all parties are represented by counsel; appeals *de novo* filed pursuant to 10 *Del. C. §9570 et seq.* from Magistrate's Court; confirmation of arbitration awards, all consumer debt cases, statutory penalty cases, *in forma pauperis* cases, or any other civil cases within the discretion of the Court which the Court deems exempt.

(6) The ADR Practitioner may not be called as a witness in any aspect of the litigation or in any proceeding relating to the litigation in which the ADR Practitioner served. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality

agreement signed by the parties and the ADR Practitioner as part of the ADR.

(7) The following definitions apply to this rule:

(a) “Arbitration” is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing the decision shall be binding, in which instance the case is removed from the Court’s docket.

(b) “Mediation” is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(c) “Neutral case assessment” is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in reaching a settlement.

(d) “ADR Practitioner” shall include the arbitrator, mediator, neutral case assessor or any other Practitioner engaged by the parties to facilitate ADR.

(8) Any other deadlines or protocols appropriate in the circumstances of the case may be imposed by this Court including, but not limited to, appropriate sanctions for failure to meet the deadlines and requirements established by the Scheduling Order or Pretrial Worksheet/Case Management Worksheet detailed below to include, in the Court’s discretion, dismissal of the action or a default judgment entered by this Court.

(9) Either party may appeal the Arbitrator's decision by filing a notice of appeal to the Civil Clerk within 15 calendar days of the Arbitrator's decision.

(10) The Pretrial Scheduling Order, if entered by the Court, in paragraph 16(b)(1) may also include:

(i) The date, or dates for conferences before trial, a final pretrial conference, and trial;

(ii) Any other matters the Court deems appropriate in the circumstances of each case.

(11) Mandatory Case Management Worksheet/Order or Pre-Trial Worksheet. Following the selection of the ADR Practitioner by the parties and within twenty (20) calendar days the parties shall file a Case Management Worksheet/Order, or Pre-Trial Worksheet with the Civil Clerk who shall present the same to the Court for consideration. This Order shall encompass the deadlines set forth in (b)(1) Scheduling and Planning of this Rule. Failure to comply with this deadline may result in sanctions being imposed by the Court, including but not limited to dismissal of the case or other appropriate sanction.

2) Court of Common Pleas Civil Rule 16.1 shall be deleted in its entirety.

3) The effective date of these Civil Rules amendments shall be March 1, 2008.

Chief Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge